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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/948,124	10/09/1997	ELLIS REINHERZ	DFCI-522A	6658
21005	7590	07/19/2005	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			YAEN, CHRISTOPHER H	
			ART UNIT	PAPER NUMBER
			1643	

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

08/948,124

**Applicant(s)**

REINHERZ ET AL.

**Examiner**

Christopher H. Yaen

**Art Unit**

1643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 41,43,63,64,66 and 68-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41,43,63,64,66 and 68-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

**RE: Reinherz et al**

1. The amendment filed 1/02/2003 is acknowledged and entered into the record. Accordingly, claims 65 and 67 are canceled without prejudice or disclaimer.
2. Claims 41,45,63-64,66, and 68-71 are pending and examined on the merits.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections Withdrawn - 35 USC § 112, 2<sup>nd</sup> paragraph***

4. The rejection of claims 41, 45, 63-64,66, and 68-71 under 35 USC § 112, 2<sup>nd</sup> paragraph as being indefinite is withdrawn in view of the persuasive arguments set forth by the applicant in the paper filed 1/02/2003.

***Claim Rejections Maintained - 35 USC § 112, 1<sup>st</sup> paragraph***

5. The rejection of claims 41,45,63-64,66, and 68-71 under 35 USC § 112, 1<sup>st</sup> paragraph as lacking an enabling disclosure is maintained for the reasons of record. Applicant argues that the amendment to the claims to indicate a specific sequence as identified by SEQ ID No: 9 overcomes the rejection of record. Applicant's arguments have been carefully considered but are not deemed persuasive to overcome the rejection of record because the claim still recites "active derivative" and fragment" language. Applicant has not provided any specific arguments to rebut the *prima facie* case as set forth in the office action mailed 7/2/2002.

Therefore, the rejection of the claims under 35 USC 112, 1<sup>st</sup> paragraph as lacking an enabling disclosure is maintained for the reasons of record.

***Claim Rejections Maintained - 35 USC § 112, 1<sup>st</sup> paragraph***

6. The rejection of claims 41,45,63-64,66, and 68-71 under 35 USC § 112, 1<sup>st</sup> paragraph as lacking adequate written description is maintained for the reasons of record. Applicant argues that the amendment to the claims to indicate a specific sequence as identified by SEQ ID No: 9 overcomes the rejection of record. Applicant's arguments have been carefully considered but are not deemed persuasive to overcome the rejection of record because the claim still recites "active derivative" and fragment" language. The instant specification has only provided written description for the claimed sequence of SEQ ID No: 9 and therefore the written description is not commensurate in scope to the claims that read on derivatives and or fragments of SEQ ID No: 9. No structure, function, or a correlation between structure and function have been provided or disclosed. Moreover, applicant has not provided any specific arguments to rebut the *prima facie* case as set forth in the office action mailed 7/2/2002.

Therefore, the rejection of the claims under 35 USC 112, 1<sup>st</sup> paragraph as lacking an enabling disclosure is maintained for the reasons of record.

***Claim Rejections Withdrawn - 35 USC § 103***

7. The rejection of claims 41 and 45 under 35 USC § 103(a) as being obvious over Fearnhead *et al* is withdrawn in view of the persuasive arguments set forth by the applicant in the paper filed 1/02/2003.

**Conclusion**

**No claim is allowed.**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher H. Yaen whose telephone number is 571-272-0838. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms, Ph.D. can be reached on 571-272-0832. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher Yaen  
Art Unit 1643  
July 6, 2005

  
SHEELA HUFF  
PRIMARY EXAMINER